The next complaint made by Mr. Triptipal Singh is that at the close of the case for the prosecution, on the charge being amended to one of abetting the commission of the offence, the learned President, in accordance with the provisions of section 172 of the Criminal Procedure Code, should have given the appellant an opportunity to recall and, if necessary, re-examine any of the witnesses who were called for the prosecution. Again, I am satisfied that it is a perfectly valid technical objection and the learned President clearly should have complied with section 172 of the Criminal Procedure Code. But on the facts of the case I am wholly satisfied that no miscarriage of justice was caused by reason of the fact that he failed to do so. The appeal against the conviction is dismissed.

As regards the sentence, whilst I do not for a moment seek to minimise the seriousness of this type of offence, in this particular instance it would appear from the report — careful and detailed, as it invariably is — made by the Probation Officer in this case that the appellant, apart from one minor conviction for selling cinema tickets on the black market, has not been in trouble before. It would also appear — and it seems to me a point of substantial importance — that the Probation Officer investigated the matter as to whether there was any reason to believe that the appellant was implicated either directly or indirectly with secret societies in Penang and received a negative reply from the Police to the effect that there was no reason to believe that he had any connection with secret societies.

The appellant is the son of poor but entirely respectable parents, and it would seem that he renders the father some assistance in carrying on his trade or occupation as a "poh peah" vendor. In the particular circumstances of this case — and I must confess with some doubt — I feel that I can and ought to give the offender another chance. I propose, therefore, to set aside the Order committing him to the Henry Gurney School for three years and order his discharge under section 21 of the Juvenile Courts Ordinance, 1947, conditionally upon him entering into a bond with his father as one surety in the sum of $250, and a further surety to the satisfaction of the Registrar in the same amount of $250, conditional upon the offender being of good behaviour and appearing for sentence any time if called upon during the period of the next two years. I make it a special condition of the bond that during the period of its continuance the offender remain under the care, supervision and control of the Probation Officer for Penang and Province Wellesley. Subject to that variation of the Order, this appeal must be dismissed.

Order varied. Appeal dismissed.

CHONG CHIN KEE v. LEE SONG & ANOR.

[C. A. (Thomson C.J., Hill J.A. and Ong J.) October 10, 1960]

[K. L. — F.M. Civil Appeal No. 45 of 1960]

Landlord and Tenant — Demolition of building for the purpose of rebuilding — Application for.

The respondents as owners of the premises No. 25 Cross Street, Kuala Lumpur applied to the Rent Assessment Board for the Municipal Area for a certificate that the Board is satisfied that the applicants intended to demolish the said premises for rebuilding purposes and that in its opinion it is in the public interest that they should be permitted to do so. The Board after hearing evidence and being satisfied that the respondents should be allowed to demolish for rebuilding purposes(provided that the tenants be allowed to occupy the said premises until May 31, 1960) issued the necessary certificate on November 28, 1959. The appellant, a tenant of the said premises, on appeal contended that firstly as the Rent Assessment Board were to follow the Civil Magistrate's Court Procedure — 1940 Rules — the second respondent should have described himself as a trustee and secondly that the Board had erred in law.

Held: (1) the second respondent correctly described himself in the application and that in any event such an irregularity could be cured by an amendment and in this case it in no way affected the merits of the case and that section 41 of the Courts Ordinance should be applied;

(2) if the appellant wished to make out that the Board had erred in law he had to make out either that there was no evidence on which a tribunal directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the tribunal acted should not have led to that conclusion.

Gurcharan Singh v. *Rochi Silk Store* (5) followed.

Cases referred to:—

(1) *Trustee of Chettiar Temple* v. *Kehar Singh* [1954] M.L.J. 18.
(2) *Vyse* v. *Foster* 8 Ch. A.C. 309.
(3) *Salomon* v. *Salomon* (1897) A.C. 22.
(4) *Teo Boon Hak* v. *Reduan bin Haji Ali & Ors.*, [1941] M.L.J. 183.
(5) *Gurcharan Singh* v. *Rochi Silk Store* [1959] M.L.J. 229.

COURT OF APPEAL.

Lall Singh for the appellant.

R. R. Chelliah for the respondent.

Cur. Adv. Vult.

Hill J.A. (with whom **Thomson C.J.** and **Ong J.** agreed): In August, 1959, the respondents as the owners of the premises at No: 25, Cross Street, Kuala Lumpur, applied to the Rent Assessment Board for the Municipal area for a certificate that the Board is satisfied that the applicants intend to demolish the premises known as No: 25, Cross Street, Kuala Lumpur, for the purpose of rebuilding and that in its opinion it is in the public interest that they should be permitted so to do.

The appellant was a tenant of the respondents/applicants in respect of the said premises.

The Board heard evidence in October and November, 1959, and was satisfied that the owners of premises Nos: 23 and 25 Cross Street intend to demolish them for the purpose of rebuilding and that in its opinion it is in the public interest that they should be permitted so to do subject to the condition that the tenants should be allowed to occupy the said premises until 31st May, 1960. On 28th November, 1959, the necessary certificate was issued by the President of the Rent Assessment Board.

The appellant appealed to the High Court and the appeal was heard by Adams J., who dismissed it. From that decision the tenant has appealed to this Court and on the same grounds.

The facts which were in evidence before the Board were as follows. There are two properties in Cross Street which the owners seek to demolish and re-erect as one modern building. These properties which comprises buildings are single storey shop houses some 40 to 50 years old and are adjacent to one another numbered 23 and 25, Cross Street. No. 23, Cross Street, is built on land held under Certificate of Title 2237 of whom Lee Pak Lin and his wife Chin Thai are the registered proprietors. The land on which No: 25, Cross Street, stands is under Certificate of Title 2236 and of that property Lee Pak Lin and his sister Lee Song are the registered owners. The registered proprietors of the land on which these buildings stand have submitted plans for the erection of a four-storey modern building and the plans have been approved by the Municipality. These plans involve the surrender of 540 square feet for a back lane reserve. No: 25, Cross Street, is occupied by Chong Chin Kee on a monthly tenancy and he is the appellant in the present appeal. The tenant of 23 Cross Street has not appealed. The applicant Lee Pak Lin has executed a trust in respect to his 2/3rd share in Lot C.T. 2236 in favour of his sons. The trust instrument was not produced in evidence.

It is to be observed that besides the two respondents other members of the family gave evidence to the effect that this joint family venture was agreed to by all members of the family interested in the property. And at this stage I think it is as well to state that in these proceedings the second respondent was at no time acting in his capacity as a trustee in the sense that he was applying to a Court for leave to do any act or thing under the trust. He was the registered proprietor of the property and he and other members of the family were before the Board as the owners thereof.

Mr. Lall Singh for the appellant contended in respect of the first ground of appeal that as proceedings before the Rent Assessment Board were to follow the civil Magistrate's Court procedure — 1940 Rules — in the application the second respondent should have described himself as a trustee. I have no doubt that if the respondent had been applying to the Board in his capacity as a trustee he should so have described himself, but he was acting as the registered proprietor and jointly so with a co-owner. In any event if at any time during the hearing it had become necessary for him to appear as a trustee the necessary amendment could have been made.

The respondents/applicants are the owners and registered proprietors of the property. The appellant is the tenant. These facts were clearly established in evidence before the Rent Assessment Board and though the second respondent was cross-examined about his trusteeship no objection was taken before the Board and it seems clear to me from the evidence that the merits of the matter were in no way affected by this issue.

Moreover, in view of the definition of "proprietor" in section 2 of the Land Code and section 42 of that Code any proceeding instituted by the second respondent in respect of the property must be as the registered proprietor.

Mr. Lall Singh referred us to *Trustee of Chettiar Temple* v. *Kehar Singh*[1], to *Vyse* v. *Foster*[2] and to *Salomon* v. *Salomon*[3], but I find none of them of any assistance.

Teo Boon Hak v. *Reduan bin Haji Ali & Ors.*[4] cited by Mr. Chelliah decided that in the absence of statutory provision only the registered proprietor can deal with the land and he is to be deemed to be the absolute proprietor even if he holds the land for representative purposes.

I am of the opinion therefore that the second respondent correctly described himself in the application and that in any event such an irregularity can be cured by amendment and that if there was such an irregularity in this case, I do not consider there was, it in no way affected the merits and that the provisions of section 41 of the Courts Ordinance, 1948, should be applied.

With regard to the third ground of appeal, the second was abandoned, I quote from the judgment of the learned Chief Justice in *Gurcharan Singh* v. *Rochi Silk Store*[5]:—

> "If the appellant wished to make out that the Board had erred in law he had to make out either that there was no evidence on which a tribunal directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the tribunal acted should not have led to that conclusion".

Adams J., could not find any reason for saying that the Board had come to an unreasonable conclusion on the evidence before it. Nor can I.

I would dismiss this appeal with costs.

Appeal dismissed.

THIRUMALAI & ANOR. v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) October 14, 1960]

[K. L. — Selangor Criminal Appeal No. 57 of 1960]

Penal Code, s.385 — Extortion — Question of Discrepancies in Evidence.

The appellants were convicted and sentenced to nine months' imprisonment in the Sessions Court for putting a person in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code. They appealed against the conviction and sentence contending that the learned President paid insufficient attention to certain considerations relating to the Police report and that the report should have discredited the evidence of the complainant because of certain discrepancies and also because evidence was admitted of events which happened after the date of this report.

Held: (1) there were no discrepancies between the report and the subsequent evidence of the person who made it and as such there was no material on which his evidence could be said to be discredited;

(2) there is no authority that excludes evidence of events which occurred after the making of the report if it is relevant and admissible.

CRIMINAL APPEAL.

Dato R. P. S. Rajasooria for the appellants.

Syed Hamzah bin Tahir (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): These two appellants were convicted in the Sessions Court at Kuala Lumpur for putting a person in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code and sentenced to nine months' imprisonment. Against these convictions and sentences they have now appealed.

There was a great deal of evidence particularly that of the complainant and his son which if it was believed showed the appellants were guilty. On the other hand both the appellants gave evidence on their own behalf and if they were believed they were not guilty.

The President in a long and careful judgment has analysed the evidence in some detail and has stated that on his consideration of the evidence as a whole he was satisfied that the prosecution witnesses were speaking the truth in so far as their evidence implicated the two appellants and accordingly he convicted.

In so far as the question was one of credibility the President's finding had not been attacked.

It is said, however, that he paid insufficient attention to certain considerations relating to the Police report in connection with the crime which was made on 16th May. It was said in the first place that that report should have discredited the evidence of the complainant by reason of discrepancies and in the second place that evidence was admitted of events which happened after the date of that report.

With regard to the first of these points I can only say that for myself I see no discrepancy between the report and the subsequent evidence of the person who made it. It is true that in his subsequent evidence he gave evidence of facts that he did not mention in his report but on no particular fact did his evidence at the trial differ from what he said in his report. In my opinion therefore there was no material on which his evidence could be said to be discredited.

Again, it is said that evidence was given of the events which occurred after the making of the report. For myself I know of no authority that excludes such evidence if it is otherwise relevant and admissible; and indeed in the practice of the Courts it is admitted almost every day.

The appeal is dismissed.

Appeal dismissed.

TAI KIEN LUING v. TYE POH SUN & ORS.

[O. C. J. (Rigby J.) October 24, 1960]

[Penang — Originating Summons No. 74 of 1959]

Charity — Impossibility of performance — General charitable intention — Cy-pres — Resulting trust.

The settlor in this case established a charitable trust upon the terms and for the express purposes contained in the trust deed. The first part of the trust provided for a named school and hospital in Penang. The second part provided for named Schools and hospitals in specified places in China, and the deed further provided that "in the event of there being any other new Schools or Hospitals in the aforesaid places in China being subsequently opened the Head Trustee shall have full discretion and authority to include the same amongst the above". The question arose as to whether the second part of the trust was void for impossibility of performance, and if it was, whether there was a general charitable intention on the part of the settlor to devote this part of the property for charitable purposes generally.

Held: (1) the mere fact that the government of this country does not recognise the government of Communist China could not make the trust void for impossibility of performance. The sole question is on the practicability or otherwise of administering the trust fund. In the light of the evidence before the Court it could not be said that the trust was void for impossibility;

(2) there was a good charitable trust. Whether it might subsequently lapse by reason of impossibility of performance depended entirely on whether or not the Controller of Foreign Exchange would be prepared to sanction the application made by the trustees of the deed to remit moneys arising out of the trust fund to the specified institutions in China;

(3) in the event of the trust lapsing by reason of impossibility of performance, the terms of the trust could not be construed in favour of a general charitable intention, but there would be a resulting trust in favour of the residuary legatees of the settlor's estate.

Cases referred to:—

(1) *In re Robinson* (1931) 100, L.J., Ch. 321.
(2) *Re Vagliano* (1905) 75, L.J., Ch. 119.
(3) *Clark* v. *Taylor* 1, Drew, 644.
(4) *In re Ovey* (1885) L.R., 29, Ch. D. 560 at p. 564.
(5) *In re Watson* [1913] 1 Ch. 314.
(6) *Re Welsh Hospital* [1921] 1 Ch. 655.

ORIGINATING SUMMONS.

Ong Huck Lim for the plaintiff (applicant).

G. H. Conaghan and *Chew Choon Poon* for 1st, 2nd and 3rd defendants.